Office-Supreme Court, U.S.
FILED
AUG 24 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1240

In the Supreme Court of the United States

OCTOBER TERM, 1980

MICHAEL P. LANE, Director,
Illinois Department of Corrections,

Petitioner,

v.

LAWRENCE WILLIAMS and
OSCAR SOUTHALL,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

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Printed by the Authority of the State of Illinois — 8-19-81

QUESTION PRESENTED FOR REVIEW

Whether the decision of the United States Court of Appeals for the Seventh Circuit conflicts with this Court's recent decision in *United States v. Timmreck* and thereby goes beyond the due process requirements previously enunciated by this Court pertaining to "knowing and voluntary" guilty pleas.

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OPINIONS BELOW

In *United States ex rel. Williams v. Morris*, 633 F.2d 71 (7th Cir. 1980) (reproduced in the Joint Appendix at J.A. 45-55), the Seventh Circuit Court of Appeals affirmed in part, and reversed in part, the decision and judgment of the United States District Court, Northern District of Illinois,

Eastern Division, which had granted respondents' applications for Writs of Habeas Corpus.[1] *United States ex rel. Williams v. Morris*, 483 F. Supp. 775 (N.D. Ill. 1980).

As was noted in the court of appeals' decision, the Petitions for Writs of Habeas Corpus had been consolidated in the district court, which originally ruled in favor of the respondents in 1978. The district court's ruling was based upon a finding that respondents' fourteenth amendment due process rights were violated by the failure to inform them of a three year mandatory parole term which would automatically attach to the penitentiary sentences which they received as part of their negotiated plea agreements. *United States ex rel. Williams v. Morris*, 447 F. Supp. 95 (N.D. Ill. 1978) (hereinafter referred to as "*Williams I*"). Subsequently, however, the court of appeals reversed that decision, holding that respondents had failed to exhaust an available state court remedy. *United States ex rel. Williams v. Morris*, 594 F.2d 614 (7th Cir. 1979).

Upon remand to the district court, respondents renewed their requests for expungement of their mandatory parole terms, contending that an intervening Illinois Supreme Court decision conclusively demonstrated that resort to the state courts was futile. The district court agreed and, for the reasons set forth in *Williams I*, granted the relief sought. *United States ex rel. Williams v. Morris*, 483 F. Supp. 776 (N.D. Ill. 1980) (hereinafter referred to as "*Williams II*"). It is from the court of appeals' partial affirmance of *Williams II* (J.A. 45-55) that the petitioner now appeals.

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[1] Since the court of appeals ruled in favor of petitioner with regard to a third individual (*i.e.*, Emanuel Williams), review has not been sought as the decision pertains to him. *See* Supreme Court Rule 21.1(b).

JURISDICTION

The court of appeals' decision was rendered on October 22, 1980. No Petition for Rehearing was filed in that court. The Petition for Writ of Certiorari was filed within 90 days of the date of the court of appeals' decision as per 28 U.S.C. §2101(c). This Court granted the Petition for Writ of Certiorari on June 8, 1981. 49 U.S.L.W. 3911 (U.S. June 8, 1981).[2]

The jurisdiction of this Court rests upon 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The fourteenth amendment to the Constitution of the United States provides, in pertinent part, that:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; . . . .

Ill. Rev. Stat., 1975, ch. 38, §1003-3-9(a) provides, in pertinent part, that:

> If prior to expiration or termination of the term of parole, the parolee violates a condition of parole, the Parole and Pardon Board may:
>
> (1) continue the existing parole, with or without modifying or enlarging the conditions; or

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[2] This case was originally entitled *Franzen v. Williams and Southall*. However, on January 20, 1981 (ironically, the date on which the Petition for Writ of Certiorari was filed in this Court), Gayle Franzen resigned as Director of the Illinois Department of Corrections and was replaced by Michael P. Lane. Director Lane's name has been substituted on all subsequent pleadings pursuant to directions from the Clerk's office.

(2) parole the person to a half-way house; or

(3) revoke the parole and reconfine the person for a term computed in the following manner:

(i) the recommitment shall be for that portion of the imposed maximum term of imprisonment or confinement which had not been served at the time of parole, less the time elapsed between the parole of the person and the commission of the violation for which parole was revoked, and, in addition, if the person was sentenced on or after the effective date of this Act the parole term; and

(ii) the person shall be given credit against the term of reimprisonment or reconfinement for time spent in custody since he was paroled which has not been credited against another sentence or period of confinement.

Ill. Rev. Stat., 1975, ch. 38, §1005-8-1(e) provides that:

Every indeterminate sentence shall include as though written therein a parole term in addition to the term of imprisonment. Subject to earlier termination under Section 3-3-8, the parole term shall be as follows:

(1) for murder or a Class 1 felony, 5 years;

(2) for a Class 2 felony, or a Class 3 felony, 3 years;

(3) for a Class 4 felony, 2 years.[3]

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[3] It should be noted that effective February 1, 1978, Illinois abolished indeterminate sentencing. The expression "Mandatory Parole Term" has now been replaced by the words "Mandatory Supervised Release Term" and the length of the term was reduced as follows:

(1) for murder or a Class X felony, 3 years;
(2) for a Class 1 felony or a Class 2 felony, 2 years;
(3) for a Class 3 felony or a Class 4 felony, 1 year.

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Ill. Rev. Stat., 1975, ch. 110A, §402 provides, in pertinent part, that:

> In hearings on pleas of guilty, there must be substantial compliance with the following:
>
> (a) ADMONITIONS TO DEFENDANT. The court shall not accept a plea of guilty without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (1) the nature of the charge;
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;
>
> (3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty; and
>
> (4) that if he pleads guilty there will not be a trial of any kind, so that by pleading guilty he waives the right to a trial by jury and the right to be confronted with the witnesses against him.
>
> (b) DETERMINING WHETHER THE PLEA IS VOLUNTARY. The court shall not accept a plea of guilty without first determining that the plea is voluntary. If the tendered plea is the result of a plea agreement, the agreement shall be stated in open court. The court, by

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Ill. Rev. Stat., 1979, ch. 38, §1005-8-1(d). While the name has been changed, the effects of the term are basically the same. *See Ill. Rev. Stat.*, 1979, ch. 38, §1003-3-9(a)(3)(i)(A) and (B). For purposes of simplicity and, in line with the provisions of §1005-8-1(d), petitioner will use the expression "Mandatory Parole Term" throughout the remainder of this brief.

questioning the defendant personally in open court, shall confirm the terms of the plea agreement, or that there is no agreement, and shall determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea.

(c) DETERMINING FACTUAL BASIS FOR PLEA. The court shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea.

(d) PLEA DISCUSSIONS AND AGREEMENTS. When there is a plea discussion or plea agreement, the following provisions, in addition to the preceding paragraphs of this rule, shall apply:

(1) The trial judge shall not initiate plea discussions.

(2) If a tentative plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specified sentence will be imposed or that other charges before the court will be dismissed, the trial judge may permit, upon request of the parties, the disclosure to him of the tentative agreement and the reasons therefor in advance of the tender of the plea. At the same time he may also receive, with the consent of the defendant, evidence in aggravation or mitigation. The judge may then indicate to the parties whether he will concur in the proposed disposition; and if he has not yet received evidence in aggravation or mitigation, he may indicate that his concurrence is conditional on that evidence being consistent with the representations made to him. If he has indicated his concurrence or conditional concurrence, he shall so state in open court at the time the agreement is stated as required by paragraph (b) of this rule. If the defendant thereupon pleads guilty, but the trial judge later withdraws his concurrence or conditional concurrence,

> he shall so advise the parties and then call upon the defendant either to affirm or to withdraw his plea of guilty. If the defendant thereupon withdraws his plea, the trial judge shall recuse himself.
>
> (3) If the parties have not sought or the trial judge has declined to give his concurrence or conditional concurrence to a plea agreement, he shall inform the defendant in open court at the time the agreement is stated as required by paragraph (b) of this rule that the court is not bound by the plea agreement, and that if the defendant persists in his plea the disposition may be different from that contemplated by the plea agreement . . . .

STATEMENT OF THE CASE

The factual situations in each of the two cases are set forth below according to the names of each of the respondents involved.

LAWRENCE WILLIAMS

On March 11, 1975, respondent Lawrence Williams pled guilty in the Circuit Court of Cook County, Illinois (No. 74-3339) to a single charge of burglary. At that time, burglary carried a penalty of one to twenty years imprisonment followed by three years mandatory parole. *Ill. Rev. Stat.*, 1975, ch. 38, §§19-1, 1005-8-1(b)(3), 1005-8-1(c)(3), 1005-8-1(e)(2). Under the terms of a plea agreement between Williams' public defender and the prosecutor, Williams was to receive an indeterminate sentence of from one to two years in prison.

Before accepting the plea, the trial judge admonished the defendant of the consequences of his plea. (J.A. 23-31) He

had the prosecutor repeat the terms of the plea bargain in open court and elicited Williams' understanding and acceptance of its terms. (J.A. 24) The trial judge also indicated that, pursuant to the plea agreement, the court had agreed to accept the sentencing recommendation of the State, conditioned upon the truth of the factual information supplied to the court concerning the defendant. (J.A. 25) The transcript contains no statement by the court, the prosecutor or the public defender that the recommended sentence included a mandatory parole term.

The judge then received Williams' acknowledgement that he understood the nature of the charges and understood his constitutional rights to remain silent, to be tried before a jury, to be proven guilty beyond a reasonable doubt, and to confront and cross-examine witnesses. (J.A. 25-28) A factual basis for the plea was established and Williams indicated that he understood that by pleading guilty he admitted those facts. (J.A. 28-29) The trial judge then described the potential statutory penalty for the charged offense, omitting any mention of a mandatory parole term. (J.A. 29-30) After hearing evidence in aggravation and mitigation, the trial court sentenced Williams to not less than one nor more than two years in prison.

Lawrence Williams was imprisoned until May 20, 1976, when he was released on parole having served approximately seventeen months in prison. Williams stated in his Petition for Writ of Habeas Corpus that he was unaware that a mandatory parole term attached to his sentence until approximately two months prior to his discharge. (J.A. 12) While serving his three year mandatory parole term, respondent was arrested and subsequently found to be a parole violator. Williams had been reincarcerated at Stateville Correctional Center, Joliet, Illinois, when the original Writ of Habeas Corpus was issued. *See Williams I*, 447 F. Supp. at 100. Before the denial of a

Motion to Reconsider in *Williams I* took effect, the respondent was released on six months mandatory release under supervision pursuant to *Ill. Rev. Stat.*, 1977, ch. 38, §1003-3-10(b)(2) on February 1, 1978. Williams' period of mandatory release expired on August 1, 1978, at which time he was released from the custody of the Illinois Department of Corrections. In sum, respondent served approximately twenty-eight months in prison.

OSCAR SOUTHALL

On March 19, 1975, respondent Southall, like respondent Williams, pled guilty in the Circuit Court of Cook County, Illinois (No. 75-228) to one count of burglary. At that time, burglary carried the same penalty of one to twenty years imprisonment followed by three years mandatory parole. *Ill. Rev. Stat.*, 1975, ch. 38, §§19-1, 1005-8-1(b)(3), 1005-8-1(c)(3), 1005-8-1(e)(2). Pursuant to a plea agreement between Southall's public defender and the prosecutor, Southall was to receive an indeterminate sentence of from one to three years. This agreement was reached at a conference in which the trial judge was present and had indicated that he would sentence the defendant to one to three years. (J.A. 74-77)

The transcript reveals that neither the trial judge nor the attorneys disclosed the existence of the mandatory parole term during their discussion of either the plea agreement or the possible sentence which could be imposed.

The trial judge explained to Southall that by pleading guilty he waived his constitutional rights to a trial by jury and to confront and cross-examine witnesses. (J.A. 75) The judge received Southall's acceptance and acknowledgement of these consequences. (J.A. 75) Southall responded negatively to the

question of whether his guilty plea had been induced by force, duress, threats or promised rewards. (J.A. 76) The judge next described his conversation with Judge Strzalka, who had previously placed Southall on two years probation in May, 1974, for an earlier offense. After being advised of the pending charge and the plea negotiations, Judge Strzalka reportedly stated that if Southall pled guilty to the burglary charge, he (Judge Strzalka) would either find a violation of probation and impose a concurrent sentence for the same term, or would order the probation revoked and terminated as being unsatisfactory. (J.A. 76-77)[4]

The trial judge then stated that as a result of a pretrial conference, the court would impose the sentence which had been discussed. (J.A. 77) Finally, after establishing a sufficient factual basis for the plea, the trial court accepted the guilty plea and sentenced Southall to an indeterminate term of one to three years in prison. (J.A. 77-79)

Southall was imprisoned until September 22, 1975, when he completed his prison sentence (less time off for good behavior) and was released on parole having served approximately eleven months in prison. He was declared a parole violator on October 8, 1976, and was reincarcerated pursuant to the three year mandatory parole provisions implicit in his original sentence. Respondent Southall was subsequently reparoled and totally discharged from the custody of the Illinois Department of Corrections as of October 24, 1979. He had served approximately twenty-three months in prison for his original conviction.

As previously noted, both Williams and Southall subsequently filed Petitions for Writs of Habeas Corpus, pursuant

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[4] At the probation revocation hearing held on June 10, 1976, Judge Strzalka chose the latter course and terminated Southall's probation as being unsatisfactory.

to 28 U.S.C. §2254, in the United States District Court, Northern District of Illinois, Eastern Division. (J.A. 9-17, 62-70) These Petitions were granted by the district court (*Williams I*); reversed and remanded by the court of appeals for failure to exhaust an available state court remedy [*United States ex rel. Williams v. Morris*, 594 F.2d 614 (7th Cir. 1979)]; and again granted by the district court in *Williams II*. It is from the court of appeals' partial affirmance of *Williams II* that the petitioner now appeals.

SUMMARY OF ARGUMENT

This Court, in its recent decision in *United States v. Timmreck*, 441 U.S. 780 (1979), held that collateral relief is not available when all a defendant shows is a failure of a trial court to comply with the formal requirements of a rule governing the entry of guilty pleas. *Timmreck* dealt with the failure of a district court to admonish a defendant as to the mandatory special parole term required by 21 U.S.C. §841(b)(1)(A).

Timmreck involved an application of 28 U.S.C. §2255 while the instant case involves an application of 28 U.S.C. §2254. However, the two statutes are sufficiently similar in content, and in application, so as to allow the rationale of *Timmreck* to be applied herein.

Factually, the *Timmreck* case and this case are very similar. Both cases concern pleas entered as a result of plea bargaining agreements. In both cases, the defendants failed to directly appeal their convictions. While it is true that the respondents in this case, unlike Timmreck, have indicated that they were each unaware of the existence of the parole terms at the time of the entry of their respective guilty pleas, their failure to allege that they would not have pled guilty had they been aware of the parole term is the more important concern. Finally, the combined prison and parole terms given to

each respondent were within the maximum penalty which could have been assessed and the record reflects the respondents' awareness of that fact. Thus, their allegations are, in reality, no different than the "technical violation" found insufficient to warrant collateral relief in *Timmreck*.

The flaw in the court of appeals' reasoning is its failure to understand that the lack of an admonishment as to the mandatory parole term is, at most, a failure to comply with the dictates of a state rule of criminal procedure. Indeed, the Illinois Supreme Court has held that the failure to admonish, while "a factor to be considered in determining whether a plea of guilty was voluntarily and intelligently made" [*People v. Wills*, 61 Ill.2d 105, 330 N.E.2d 505, 508 (1975)], does not, in and of itself, involve a "constitutional issue or standard."

The Illinois mandatory parole term operates in a manner quite similar to the mandatory special parole term provided for in 21 U.S.C. §841(b). This Court has found, in *Timmreck*, that the lack of an admonishment as to the federal parole term is neither "constitutional nor jurisdictional." *United States v. Timmreck*, *supra* at 783. This Court must therefore conclude that a similar failure to admonish as to the Illinois mandatory parole term cannot be collaterally attacked under 28 U.S.C. §2254 since habeas relief, for purposes of this case, is limited to constitutional violations.

This Court has recognized the benefits to the criminal justice system from guilty pleas and plea bargains. However, those benefits can be secured only if such pleas are accorded "a great measure of finality." *Blackledge v. Allison*, 431 U.S. 63, 71-72 (1977). Moreover, the well-established principles of comity and federalism are especially important when considered in connection with a §2254 proceeding.

This Court held in *Timmreck* that failure to admonish as to the special mandatory parole term is neither "constitutional

nor jurisdictional". This same finding should be applied to the states for purposes of a §2254 proceeding. Therefore, the judgment of the court of appeals, granting the writs, should be reversed.

ARGUMENT

THE COURT OF APPEALS' DECISION IN THIS CASE CONFLICTS WITH THIS COURT'S RECENT DECISION IN *UNITED STATES v. TIMMRECK* AND THEREBY GOES BEYOND THE DUE PROCESS REQUIREMENTS PREVIOUSLY ENUNCIATED BY THIS COURT PERTAINING TO "KNOWING AND VOLUNTARY" GUILTY PLEAS.

A. The Rationale of *Timmreck* Should Be Applied To The Instant Case.

This Court, in its recent decision in *United States v. Timmreck*, 441 U.S. 780 (1979), ruled that a federal offender may not receive collateral relief from a guilty plea based upon a failure to advise him of the mandatory special parole term required by 21 U.S.C. §841(b)(1)(A). In *Timmreck*, the defendant, acting on advice of counsel, pled guilty to a charge of conspiracy to distribute various controlled substances. As required by Fed. Rules Cr. Proc. Rule 11 [18 U.S.C.A. (1966)[5]],

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[5] At the time of Timmreck's guilty plea, Rule 11 provided:

> A defendant may plead not guilty, guilty or, with the consent of the court, *nolo contendere*. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of *nolo contendere* without first addressing the defendant personally and determining that

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the district judge formally addressed the defendant and determined that there was a factual basis for the plea and that the plea was being made voluntarily. The judge admonished the defendant that he could receive a sentence of up to 15 years imprisonment and a $25,000 fine; however, he failed to advise the defendant of the mandatory special parole term of at least three years.

The district judge accepted the guilty plea and, at a later proceeding, sentenced the defendant to 10 years imprisonment, plus a mandatory special parole term of 5 years, and a fine of $15,000. Pursuant to a plea bargain with the prosecutor, other charges against the defendant were dismissed. No objection to the sentence was raised at that time and the defendant did not take a direct appeal from his conviction.

Approximately two years later, the defendant moved to vacate the sentence pursuant to 28 U.S.C. §2255 on the ground that the trial judge had violated Rule 11 by accepting his plea without informing him of the mandatory special parole term. Following an evidentiary hearing, the district court denied Timmreck's motion. *Timmreck v. United States*, 423 F.Supp. 537 (E.D. Mich. 1976). The district court recognized that a violation of Rule 11 had occurred but concluded that collateral relief was not justified since the defendant had received a sentence within the maximum described to him at the time the guilty plea was accepted and thus had not suffered any prejudice. 423 F.Supp. at 539-540.

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> the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea.

Rule 11 has since been modified so as to make explicit what was meant by "the nature of the charge and the consequences of the plea." *See* Fed. Rules Cr. Proc. Rule 11 [18 U.S.C.A. (1975)].

The Sixth Circuit Court of Appeals reversed. *Timmreck v. United States*, 577 F.2d 372 (6th Cir. 1978). That court held that a violation of Rule 11 will support a collateral attack on a guilty plea even where there is neither constitutional error nor any showing of prejudice to the defendant. *Id.* at 375-377.

This Court reversed the Sixth Circuit's decision in a unanimous opinion authored by Mr. Justice Stevens. The gist of this Court's holding was that a violation of Rule 11 is neither constitutional nor jurisdictional. The opinion went on to state that:

> Nor can any claim reasonably be made that the error here resulted in a "complete miscarriage of justice" or in a proceeding "inconsistent with the rudimentary demands of fair procedure." [*Hill v. United States*, 368 U.S. 424, 428 (1962).] Respondent does not argue that he was actually unaware of the special parole term or that, if he had been properly advised by the trial judge, he would not have pleaded guilty.

United States v. Timmreck, 441 U.S. at 784.

Timmreck thus holds that collateral relief is not available when all a defendant shows is a failure of a trial court to comply with the formal requirements of a rule governing the entry of guilty pleas.

Petitioner is, of course, aware of the fact that *Timmreck* was decided pursuant to 28 U.S.C. §2255 while the instant case involves an application of 28 U.S.C. §2254. It is submitted, however, that the two statutes are sufficiently similar in content, and in application, so as to allow the rationale of *Timmreck* to be applied to a §2254 proceeding.[6]

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[6] Note, *Developments in the Law — Federal Habeas Corpus*, 83 Harv. L. Rev. 1038 (1970) at 1040, n. 1 ("State prisoners seek relief by habeas corpus under 28 U.S.C. §2241 *et. seq.* (1964). Federal

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As was true in *Timmreck*, the two pleas entered herein were the result of plea bargains. (J. A. 24-25, 74-77); *United States v. Timmreck*, 441 U.S. at 782.[7] Similarly, neither respondent herein appealed his conviction to the Illinois reviewing courts. *Williams* I, 447 F.Supp. at 97. Indeed, neither respondent has attempted to invoke *any* state legal

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prisoners technically utilize a motion to vacate judgment under 28 U.S.C. §2255 (1964). These two remedies are equivalent for most purposes ... except where section 2255 presents special problems.")

This Court has noted, is a slightly different context, that the scope of review in a §2254 case is a "narrow one of due process" and that it entails only those claims which constitute a "failure to observe that fundamental fairness essential to the very concept of justice." *Donnelly v. DeChristoforo*, 416 U.S. 637, 642 (1974). Petitioner, therefore, submits that the *Donnelly* standard is analagous to the §2255 standard of a "complete miscarriage of justice" or a proceeding "inconsistent with the rudimentary demands of fair procedure." *See Hill v. United States*, 368 U.S. 424, 428 (1962); *see also, Wainwright v. Sykes*, 433 U.S. 72 (1977) and *United States v. Hayman*, 342 U.S. 205, 217 (1952).

[7] It is unclear whether the trial judge in *Timmreck* was a party to the plea bargain discussions. Rule 11 as presently constituted would appear to preclude such involvement. Fed. Rules Cr. Proc. Rule 11(e) [18 U.S.C.A. (1975)]. The Notes of the Advisory Committee on Rules state that:

> It is contemplated that the judge may participate in such discussions as may occur when the plea agreement is disclosed in open court. This is the position of the recently adopted Illinois Supreme Court Rule 402(d)(1) (1970). (Citation omitted).

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remedy. *Id.*[8] It was not until two years after their pleas that the respondents filed habeas corpus petitions in federal district court. (J.A. 4, 58). While it is true that each respondent argues that he was unaware of the existence of the mandatory parole term at the time of the entry of his guilty plea (J.A. 12, 65), it is important to note that neither respondent has alleged that he would not have pled guilty had he been properly advised of the term. (J.A. 11-13, 65-66). Finally, the combined prison and parole terms given to each respondent were within the maximum penalty which could have been assessed and the record reflects the respondents' awareness of that fact. (J.A. 30, 74-75).[9] Thus, their allegations are, in

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Fed. Rules Cr. Proc. Rule 11 [18 U.S.C.A. (1975) at 25].

The trial judge in the Williams case appears to have followed the dictates of Supreme Court Rule 402(d) (J.A. 23-25). (The Petition for Writ of Certiorari erroneously stated that "The trial judge was a party to the conference at which the plea agreement was finally struck." Petition for Writ of Certiorari at 4. Further review of the transcript indicates that the judge was a "party" to the discussions between the prosecutor and defense counsel only in the sense that he knew of the results prior to the discussion in open court.) The trial judge in the Southall case, however, appears to have actually participated in the plea discussions (J.A. 74-77).

[8] As noted in the Court of Appeals' decision in *Williams* II, the exhaustion issue was not renewed by petitioner in that proceeding since neither of the respondents were in the custody of the Illinois Department of Corrections and, therefore, were precluded by Illinois law from filing a postconviction petition. (J.A. 46, n.2)

[9] Respondent Williams served approximately twenty-eight months in prison or four months more than the actual maximum sentence given to him while respondent Southall served a total of only twenty-three months of actual imprisonment as opposed to the three year maximum sentence imposed in his case.

reality, no different from those found to constitute merely a "technical violation", insufficient to warrant collateral relief, in *Timmreck*. However, the court of appeals' decision in the instant case as well as its previous decision in the case of *United States ex rel. Baker v. Finkbeiner*, 551 F.2d 180 (7th Cir. 1977) has had the effect of requiring mandatory parole term admonishments prior to the entry of all guilty pleas in order to comply with the due process requirements of the federal constitution.

B. The Failure To Admonish As To The Mandatory Parole Term Constituted, At Most, A Failure To Comply With A State Rule Of Criminal Procedure.

The flaw in the court of appeals' reasoning is its failure to understand that the lack of an admonishment as to the mandatory parole term is, at most, a failure to comply with the dictates of Illinois Supreme Court Rule 402. *Ill. Rev. Stat.*, 1975, ch. 110A, §402. Supreme Court Rule 402 was enacted so as to comply with the holding of this Court in *Boykin v. Alabama*, 395 U.S. 238 (1969) that all guilty pleas be "knowing and voluntary"[10] as well as to give greater visability to plea bargaining of the type sanctioned by this Court in *Santobello v. New York*, 404 U.S. 257 (1971). *Ill. Ann. Stat.*, ch. 110A, §402 (Smith-Hurd) (Committee Comments) at 529-530; *People v. Wills*, 61 Ill.2d 105, 330 N.E.2d 505, 508 (1975).

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[10] As used herein, "knowing and voluntary" has the same meaning as "intelligently and knowingly"; "voluntarily and intelligently"; "voluntarily and knowingly"; or "voluntarily and understandingly". *See Boykin v. Alabama, supra* at 241, 244 (1969); *People v. Wills*, 61 Ill.2d 105, 330 N.E.2d 505, 508 (1975).

Supreme Court Rule 402 requires that prior to the acceptance of a guilty plea, the trial court must first determine that a defendant understands the "minimum and maximum sentence prescribed by law, ..." *Ill. Rev. Stat.*, 1975, ch. 110A, §402(a)(2). This requirement did not, however, mandate that a defendant, at the time of the instant pleas, be admonished as to the mandatory parole term. *People v. Wills, supra* at 509.[11]

In *Wills*, the Illinois Supreme Court held that the failure to admonish as to the mandatory parole term was "a factor to be considered in determining whether a plea of guilty was voluntarily and intelligently made." *People v. Wills, supra* at 508. However, the Court noted that the question was a procedural question not involving a constitutional issue or standard. *Id.* at 509. It is submitted that the *Wills* decision, although not directly applicable to the instant pleas since the pleas occurred prior to May 19, 1975, correctly found, as did this Court in *Timmreck*, that the failure to admonish as to a mandatory parole term did not involve a "constitutional issue or standard."

The Illinois mandatory parole term operates in a manner quite similar to the mandatory special parole term provided for in 21 U.S.C. §841(b). The latter, which must be at least two years in length and which may be for as long as life, "is separate from and begins *after* the usual sentence terminates,

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[11] Indeed, at the time of the guilty pleas herein, the Illinois Supreme Court appeared to have affirmatively held that a mandatory parole term admonishment need *not* be given to a defendant who wished to plead guilty. *People v. Krantz*, 58 Ill.2d 187, 317 N.E.2d 559, 564 (1974). A trial judge, and for that matter, any lawyer, who kept up with the decisions of the Illinois Supreme Court could scarcely be faulted for believing that such admonishments were therefore not required in March, 1975.

including any period of supervision." Bureau of Prisons Policy Statement 7500.43 at 2 (January 18, 1973). If a defendant violates the conditions of the special parole term, he may be returned to prison to serve the entire special parole term, not merely the unexpired portion. 21 U.S.C. §841(c). As one court has noted:

> Special parole is a significant penalty. [Citations omitted]. Unlike ordinary parole, which does not involve supervision beyond the original prison term set by the court and the violation of which cannot lead to confinement beyond that sentence, special parole increases the possible period of confinement. It entails the possibility that a defendant may have to serve his original sentence plus a substantial additional period, without credit for time spent on parole.

Moore v. United States, 592 F.2d 753, 755 (4th Cir. 1979); *accord, Bell v. United States*, 521 F.2d 713, 715 (4th Cir. 1975).

Similarly, the Illinois mandatory parole term concept provided that a person whose parole was revoked could be reconfined in the following manner:

> [T]he recommitment shall be for that portion of the imposed maximum term of imprisonment or confinement which had not been served at the time of parole, less the time elapsed between the parole of the person and the commission of the violation for which parole was revoked, and, in addition, if the person was sentenced on or after the effective date of this Act the parole term; . . . .

Ill. Rev. Stat., 1975, ch. 38, §1003-3-9(a)(3)(i).

Notwithstanding the above, this Court, in *Timmreck*, chose to characterize the failure to admonish under Rule 11 as being neither "constitutional nor jurisdictional." *United States v. Timmreck, supra* at 783. Just as a failure to admonish as to the special parole term could not be collaterally

attacked as a being a failure to advise a defendant of the "consequences of the plea", so too, must this Court conclude that the failure to advise the respondents of their mandatory parole terms cannot be collaterally attacked under 28 U.S.C. §2254 since habeas relief, for purposes of this case, is limited to constitutional violations.

C. Longstanding Principles Concerning Finality Of Judgments, Comity, And Federalism Support A Conclusion That Respondents Should Not Be Allowed To Collaterally Attack Their Guilty Pleas By Way Of Federal Habeas Corpus.

This Court has recognized that the "guilty plea and the often concomitant plea bargain are important components of this country's criminal justice system." *Blackledge v. Allison*, 431 U.S. 63, 71 (1977); *see generally Santobello v. New York, supra* at 260-261. Moreover, this Court has recognized that the advantages inherent in guilty pleas can only be secured if such pleas are accorded "a great measure of finality." *Blackledge v. Allison, supra* at 71.

> To allow indiscriminate hearings in federal postconviction proceedings, whether for federal prisoners under 28 U.S.C. §2255 [28 U.S.C.S. §2255] or state prisoners under 28 U.S.C. §§2241-2254 [28 U.S.C.S. §§2241-2254], would eliminate the chief virtues of the plea system—speed, economy, and finality. And there is reason for concern about that prospect. More often than not a prisoner has everything to gain and nothing to lose from filing a collateral attack upon his guilty plea. If he succeeds in vacating the judgment of conviction, retrial may be difficult. If he convinces a court that his plea was induced by an advantageous plea agreement that was violated, he may obtain the benefit of its terms. A collateral attack may also be inspired by "a mere desire to be

> freed temporarily from the confines of the prison." *Price v. Johnston*, 334 U.S. 266, 284-285, 92 L.Ed. 1356, 68 S. Ct. 1049; *accord, Machibroda v. United States*, 368 U.S. 487, 497, 7 L.Ed. 2d 473, 82 S. Ct. 510 (Clark, J., dissenting).

Id. at 71-72.

Indeed, as Mr. Justice Stevens noted in *Timmreck*:

> [T]he concern with finality served by the limitation on collateral attack has special force with respect to convictions based on guilty pleas.
>
> 'Every inroad on the concept of finality undermines confidence in the integrity of our procedures; and, by increasing the volume of judicial work, inevitably delays and impairs the orderly administration of justice. The impact is greatest when new grounds for setting aside guilty pleas are approved because the vast majority of criminal convictions result from such pleas. Moreover, the concern that unfair procedures may have resulted in the conviction of an innocent defendant is only rarely raised by a petition to set aside a guilty plea.'

United States v. Timmreck, supra at 784. (Citation omitted).

Furthermore, as was noted by this Court, in a slightly different context (*i.e.*, the issue of exhaustion of available state court remedies), the federal habeas corpus power:

> [S]hould be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the states, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the constitution.

Ex parte Royall, 117 U.S. 241, 251 (1886).

These well-established principles of comity and federalism are especially important when considered in connection with a §2254 proceeding.

> State judges, like federal judges, have a constitutional obligation to uphold federal law .... There is no compelling reason to think that a federal district judge is more expert—in terms of familiarity or ability—than state appellate courts in interpreting the constitutional decisions of the Supreme Court.

Note, *Developments in the Law — Federal Habeas Corpus, supra* at 1059-1060.

As previously noted, the Illinois Supreme Court has held that a failure to admonish as to the mandatory parole term, while a factor to be considered in determining whether a guilty plea was "knowing and voluntary" does not involve a "constitutional issue or standard." *People v. Wills, supra* at 508-509.

Petitioner submits that if the federal courts are not to grant collateral relief under §2255 to *federal* prisoners because a failure to admonish as to the mandatory special parole term is "neither constitutional nor jurisdictional" than it stands to reason that this Court should apply the same holding to the states for purposes of a §2254 proceeding.

CONCLUSION

For the foregoing reasons, petitioner urges this Court to reverse that portion of the court of appeals' decision which granted habeas corpus relief to the respondents.

Respectfully submitted,

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Dated: August 19, 1981